IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 41 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

CELLULOSE PRODUCTS OF INDIA LTD.,

Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 23/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

At the instance of the revenue, the following questions are referred for our opinion in respect of

assessment years 1981-82 and 1982-83 :-

1. Whether in law and on facts, the Appellate Tribunal is right in confirming the view taken by the Commissioner of Income-tax (Appeals) who deleted perquisites by way of premium on personal accident policy and telephone expenses, for the assessment year in question ?

2. Whether in law and on facts, the Appellate Tribunal is right in confirming the view taken by the Commissioner of Income-tax (Appeals) who deleted the perquisites on account of reimbursement of medical benefit for the assessment year in question ?

3. Whether in law and on facts, the Appellate Tribunal is right in sustaining the order made by the Commissioner of Income-tax (Appeals) in deleting the value of perquisite by way of use of motor car ?

2. The respondent assessee is a public limited Company engaged in manufacturing activities. In the course of the assessment proceedings for both the years, the Income-tax Officer made additions for the purposes of computation under section 40(c) in respect of half of the telephone expenses as well as the premium paid on personal accident policy for the Directors by treating the same as perquisites. The Income-tax Officer also treated the motor car expenses as well as reimbursement of medical expenses as perquisites. In appeal, the Commissioner deleted all the additions. The Tribunal confirmed the view taken by the Commissioner.

3. Though served, none appears for the respondent-assessee.

4. At the hearing of the reference, Mr Akil Kureshi, learned counsel for the revenue points out that the controversies raised herein have already been considered by this Court in various decisions. We accordingly do not go into detailed discussion of the questions referred to us and propose to answer the questions in light of the reported decisions.

5. As far as question No. 1 is concerned, it is in two parts. In Ambica Mills Ltd. vs. Commissioner of

Income-tax, (1999) 235 ITR 264 decided on 3.4.1998, this Court took a view that if a Company had, by taking out a policy of insuring the directors against personal accidents sought in fact to insure itself in respect of the liability that may arise towards the directors as a result of accident, then that situation would be different from a director himself taking out a personal accident insurance under which he would be obliged to pay the premium himself and not the Company. In the facts of that case, this Court held that the entire expenses of the insurance premium paid on the insurance policy in respect of managing directors taken by the Company was allowable as expenditure of the Company and there was nothing on record to show that the director himself wanted to take the insurance. In another reference between the same parties, viz. CIT vs. Ambica Mills Ltd. (1999) 236 ITR 921, this Court elaborated the above principle by observing as under :-

"the question whether premium paid for the policy taken out for the managing director would constitute benefit to the director within the meaning of section 40(c), would depend upon the nature of the policy, who had taken it out and whose obligation it was to pay the premium. If the intention of the Company by taking out such policies for insuring directors against personal accident was in fact to insure itself in respect of the liability that may arise towards the director as a result of an accident, then that situation would be different from a director himself taking out a personal accident insurance policy under which he would be obliged to pay the premium and not the Company. If such premiums are reimbursed to the director, which is an obligation of the director himself to pay and not that of the company, qua the insurance company, then that would amount to a benefit to the director within the meaning of section 40(c) of the said Act."

In the facts of that case, this Court observed that it was not shown that the director himself wanted to take out the policy or that it was his own obligation to pay the premium and that no such contention was canvassed before the lower authority. The premia were paid directly by the Company which had taken out the policies in respect of the three directors and accordingly this Court confirmed that the personal accident insurance premium was not meant to be a benefit or perquisite to the directors and, therefore, should not be disallowed.

6. The learned counsel for the revenue submitted that the matter will have to be remanded for examination of the facts of this case to decide whether the policy was taken by the Director or by the Company, as there is nothing on the record of these proceedings to show whether any such inquiry was conducted by the Assessing Officer.

7. In view of the fact that fact finding authorities i.e. the Commissioner of Income-tax (Appeals) as well as the Tribunal have disallowed the additions and also in view of the fact that the amount of insurance premium involved in the controversy is only Rs.702/- as mentioned in para 5 of the order of the Commissioner of Income-tax (Appeals), we are not inclined to accede to the aforesaid request made by the learned counsel for the revenue.

8. In view of the above discussion and following the principles laid down by this Court in Ambica Mills Ltd. (Supra) and CIT vs. Ambica Mills Ltd. (Supra), we hold that the Tribunal was right in confirming the view taken by the Commissioner of Income-tax (Appeals) who deleted the premium on personal accident policy as a perquisite for the assessment years in question.

9. As far as the question about deletion of telephone expenses is concerned, in Ambica Mills Ltd. vs. CIT, (1999) 235 ITR 264, in the facts of that case, this Court held that there was no warrant for holding that the entire telephone facility installed at the residence of the directors was intended only for the personal purpose of the directors and was justified. In the facts of the present case, the Income-tax Officer disallowed one half of the telephone expenses. However, the CIT(Appeals) deleted the entire addition with the result that the entire amount of telephone expenses was taken out for the purpose of computation under Section 40(c) of the Act.

The learned counsel for the revenue, however, also invited our attention to the decision dated 13.4.1998 of this Court in CIT vs. Ambica Mills Ltd. (1999) 236 ITR 921 where the view taken was that the reimbursement of telephone expenses to the managing directors would be a benefit within the meaning of the provisions of Section 40(c)(i) of the Act and, therefore, the expenditure incurred by the Company in respect of this item is required to be computed in the disallowance under Section 40(c) read with Section 40A(5) of the Act. The learned counsel for the revenue has, therefore,

heavily relied upon the subsequent decision dated 13.4.1998 and has submitted that the Tribunal ought to have included the entire amount of telephone expenses for the purpose of computation under Section 40(c) of the Act and that in any view of the matter the Tribunal ought to have restored the order passed by the Income-tax Officer in respect of addition made for half of the telephone expenses for the purpose of computation under Section 40(c) of the Act.

10. We, however, do not propose to enter into the aforesaid controversy whether the view taken by this Court in CIT vs. Ambica Mills Ltd., 236 ITR 921 is inconsistent with the view taken by this Court in Ambica Mills vs. CIT, 235 ITR 261 because the amounts involved in respect of the two assessment years are comparatively small and also in view of the fact that the provisions of sub-section (5) of Section 40A and sec. 40(c) of the Act have been deleted by Direct Tax Laws (Amendment) Act, 1987 with effect from 1.4.1989. We accordingly do not interfere with the decision of the Appellate Tribunal, which is a final fact finding authority and hold that the Appellate Tribunal was right in confirming the view taken by the CIT (Appeals) who deleted the perquisite by way of telephone expenses for the assessment years in question.

11. As far as question No. 2 is concerned, the learned counsel for the revenue is on firm ground in contending that the controversy about reimbursement of medical benefit being treated as a perquisite for the purpose of section 40(c) is concluded in favour of the revenue by the decisions of this Court in Gujarat Steel Tubes Ltd. vs. CIT (1994) 210 ITR 358 and in Ambica Mills Ltd. vs. CIT (1999) 235 ITR 264 wherein this Court has taken the view that reimbursement of medical expenses incurred by the director is a benefit to the director within the meaning of section 40(c)(i) of the Income-tax Act, 1961 and is not an allowable expenditure. We accordingly hold that the Appellate Tribunal was not right in confirming the view taken by the CIT (Appeals) who deleted the perquisite on account of reimbursement of medical benefit for the assessment year in question.

12. Coming to question No. 3 whether expenses for the use of motor car are to be treated as a perquisite, we find that in CIT vs. I.G. Belline, (1999) 237 ITR 336 this Court has taken a view that motor car expenses are not to be treated as a perquisite and the question has been decided in favour of the assessee and against the revenue. Following the said decision, we hold that the Appellate Tribunal was right in sustaining the order

made by the Commissioner of Income-tax (Appeals) in deleting the value of perquisite by way of use of motor car.

13. We accordingly answer the questions referred to us as under :-

We answer question No. 1 in the affirmative i.e. in favour of the assessee and against the revenue both in respect of premium of personal accident policy and telephone expenses for the reasons mentioned hereinabove.

We answer question No. 2 in the negative i.e. in favour of the revenue and against the assessee in respect of the reimbursement of medical benefit.

We answer question No. 3 in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

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